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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/483,759	01/14/2000	Michael F. Morganelli	130017-0010	8799
24267	7590	10/04/2005	EXAMINER	
CESARI AND MCKENNA, LLP			KENDALL, CHUCK O	
88 BLACK FALCON AVENUE			ART UNIT	
BOSTON, MA 02210			PAPER NUMBER	
			2192	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/483,759

Applicant(s)

MORGANELLI ET AL.

Examiner

Chuck O. Kendall

Art Unit

2192

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 13-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-12 is/are allowed.
- 6) ☒ Claim(s) 1-6 and 13 - 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/25/02, 2/13/04, 6/30/04, 7/20/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**Detailed Action**

1. This action is in response to the application filed 06/01/05.
2. Claims 1 – 23 are pending.

***Abstract***

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited.

The abstract of the disclosure is objected to because it exceeds 150 words. Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 – 6, 13 – 23 are being rejected for lack of antecedent basis.

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Claim 1 recites the limitation "the logical operation of a corresponding application program" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claims 13, 15 and 21 recites the limitation "the flow diagram" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation "the flow diagram" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claims 22 & 23 recites the limitation "the flow diagram" in line 5. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 23 is rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a specific and substantial asserted utility or a well, established utility.

Applicant claims Electromagnetic signals which is neither concrete nor tangible, as well as not falling under any known category of statutory subject matter such as a product, an apparatus, a process, nor a composition.

For eligibility under 35 U.S.C. 101, claims have to meet certain guidelines to be considered statutory,

I. "Tangible" - Applying *In re Warmerdam*, 33 F.3d 1354, 31 USPQ2d 1754 (Fed. Cir. 1994), the examiner will determine whether there is simply a mathematical construct claimed, such as a disembodied data structure and method of making it. If so, the claim involves no more than a manipulation of an abstract idea and therefore, is nonstatutory under 35 U.S.C. § 101. In *Warmerdam* the **abstract idea** of a data structure became capable of producing a useful result when it was fixed in a tangible medium which enabled its functionality to be realized.

II. "Concrete" - Another consideration is whether the invention produces a "concrete" result. Usually, this question arises when a result cannot be assured. An appropriate rejection under 35 U.S.C. § 101 should be accompanied by a lack of enablement rejection, because the invention cannot operate as intended without undue experimentation.

6. Claim 23 is also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a tangible asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

### ***Claim Objections***

7. Claims 1 – 6, & 13 – 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **Reasons for Allowance**

8. Examiner has reviewed and considered Applicants comments as indicated on pages 11 – 15 of Applicant's response dated 06/01/05. Per Applicant's amendments as presented in his response of 06/01/05 claims 7 – 12 are now in condition for allowance. The following is an Examiner's statement of reasons for allowance.

The prior art of record does not teach or fairly suggest at least the limitations of:

"...establishing a busy indicator at a given program object, the busy indicator signifying whether the given program object is currently executing its associated function during execution of the flow diagram;

in response to the occurrence of the given program object's triggering event, during execution of the flow diagram testing the respective busy indicator...", as best illustrated by figure 12, in such a manner as recited in independent claim 7 and as pointed out in pages 11 – 15 of Applicant's response.

Therefore, claims 7 – 12 are in condition for allowance.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### Correspondence information

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuck Kendall whose telephone number is 571-272-3698. The examiner can normally be reached on 10:00 am - 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on 571-272-3695. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ck.

*Chameli C. Das*  
**CHAMELI C. DAS**  
PRIMARY EXAMINER

*8/8/05*